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EXTRAORDINARY

भाग II — खण्ड 2

PART II — Section 2

प्राधिकार से प्रकाशित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation.

## RAJYA SABHA

The following Bills were introduced in the Rajya Sabha on the 07th February, 2020:—

### I

#### BILL NO. LXIV OF 2019

*A Bill to provide for establishment of National Council for Waste Management for managing waste and suggest required policy measures for waste management and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called The National Council for Waste Management Act, 2019.  
(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title and  
commencement.

2. In this Bill, unless the context otherwise requires,—

Definitions.

(a) 'Chairperson' means the Chairperson of the National Council for Waste Management;

(b) 'Council' means the National Council for Waste Management constituted under section 3;

(c) 'member' means a Member of the Council;

(d) 'prescribed' means prescribed by rules under this Act;

(e) 'recycling' means the process of transforming segregated non-biodegradable solid waste into new material or product or as raw material for producing new products which may or may not be similar to the original products;

Establishment  
of National  
Council for  
Waste  
Management.

**3. On and from the commencement of this Act, there shall be established, a body to be called the National Council for Waste Management for the purpose of performing functions assigned under this Act.**

Constitution  
of the  
National  
Council for  
Waste  
Management.

**4. (1) The Council shall consist of,—**

**(a) a Chairperson, who is or has been a Chief Justice of India or is or has been a Judge of Supreme Court or is an eminent person of impeccable integrity and outstanding ability having special knowledge and expertise of not less than twenty-five years in the matters relating to environment and handling and management of waste.**

**(b) Five members, from amongst persons of ability, integrity and standing who have had experience in law trade unionism, management of an industry or organisation committed to managing of waste in a systematic manner and creating an environment friendly atmosphere for all:**

**Provided that not less than fifty percent of the Members of the Council shall be from amongst the persons belonging to the Scheduled Castes, Scheduled Tribes, other Backward Classes, Minorities and Women.**

(2) The Chairperson or a Member shall not be—

(i) a member of Parliament or a member of the Legislature of any State or Union territory; or

(ii) a person convicted of any offence involving moral turpitude; or

(iii) a person who has been removed or dismissed from the service of the Union or a State.

Appointment  
of Chairperson  
and Members  
on recom-  
mendations of  
Selection  
Committee.

**5. (1) The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of—**

**(a) the Prime Minister of India—Chairperson;**

**(b) the Chief Justice of India or a Judge of the Supreme Court nominated by him—Member;**

**(c) the Speaker of the House of People—Member;**

**(d) the Leader of Opposition in the House of the People—Member;**

**(e) one eminent jurist or environmentalist, as recommended by the Chairperson and Members referred to in clauses (a) to (d) above, to be nominated by the President—Member.**

(2) No appointment of a Chairperson or a Member shall be invalid merely by reason of any vacancy in the Selection Committee.

(3) The Selection Committee shall regulate its own procedure in a transparent manner for selecting the Chairperson and Members of the Council.

Filling of  
vacancies of  
Chairperson  
or Members.

**6. The President shall take or cause to be taken all necessary steps for the appointment of a new Chairperson and Members of the Council at least three months before the expiry of the term of the Chairperson or Member, as the case may be, in accordance with the procedure laid down in this Act.**

7. The Chairperson and every Member shall, on the recommendations of the Selection Committee, be appointed by the President by warrant under his hand and seal and hold office as such for a term of three years from the date on which he enters upon his office or until he attains the age of seventy years, whichever is earlier:

Term of office of Chairperson and Members.

provided that he may—

- (a) by writing under his hand addressed to the President, resign his office; or
- (b) be removed from his office; in the manner provided in section 8.

8. The President shall remove a person from the office of Chairperson or a Member, if that person—

Removal of Chairperson and Member from the office.

- (a) becomes an undischarged insolvent;
- (b) gets convicted and sentenced to imprisonment for an offence involving moral turpitude;
- (c) becomes of unsound mind and stands so declared by a competent court;
- (d) refuses to act or becomes incapable of acting;
- (e) is without obtaining leave of absence from the Council, absent from three consecutive meeting of the Council:

Provided that no person shall be removed until that person has been given a reasonable opportunity of being heard in the matter.

**9. The salary, allowances and other conditions of service of—**

Salary, Allowances and other conditions of service of Chairperson and Members.

- (i) the Chairperson shall be the same as those of the Chief Justice of India; and**
- (ii) other Members shall be the same as those of a Judge of the Supreme Court.**

**10. (1) The Central Government shall provide the Council with such officers and employees as may be necessary for the efficient performance of the functions of the Council under this Act.**

Officers and other employees of the council.

**(2) The salaries and allowances payable to, and the other terms and conditions of service of, the officers and other employees appointed for the purpose of the Council shall be such as may be prescribed.**

**11. (1) The council shall perform all or any of the following functions, namely:—**

Functions of the Council.

(a) to consult with and advise the Union and State Governments with respect to policy, programs, goals and operations of waste management, including solid and hazardous waste management functions and responsibilities, with particular emphasis on long-range planning and public education;

(b) to review implementation of current legislations in force on the waste management;

(c) to file annually a report of its deliberations and the recommendations sent to the Central Government.

**(d) to set up research and development centers across all States and Union Territories for efficient, cost effective and less polluting mechanisms to recycle and manage various types of wastes;**

(e) to guide industries to ensure manufacturing of quality products which last longer, resulting in its delayed disposal as waste.

(f) any other matter which may be referred to it by the Central Government.

Grants by the  
Central  
Government.

**12.** The Central Government shall, after due appropriation made by Parliament by law in this behalf, pay to the Council by way of grants such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.

Accounts and  
audit.

**13. (1)** The Council shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor General of India.

(2) The accounts of the Council shall be audited by the Comptroller and Auditor General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Council to the Comptroller and Auditor General.

Annual  
Report.

**14.** The Council shall prepare in such form and at such time, for each financial year, as may be prescribed, its annual report, giving full account of its activities during the previous financial year and forward a copy thereof to the Central Government.

Power to  
make rules.

**15. (1)** The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## STATEMENT OF OBJECTS AND REASONS

With the ever growing population and the basic need of fulfilling the promise of 'ease of living' and 'living healthy' for all India, it is imperative that the waste that we create is managed properly. India is on the path of development, the buying power of the commoner is increasing and with this the consumption of everything is bound to increase. This will also result in the increase of waste that will be generated.

The waste can be domestic, construction, medical, bio medical, industrial, e-waste, etc. If no efficient mechanism is devised for proper disposal of such wastes, it can lead to major environmental issues. The waste management in our country is regulated by Ministry of Environment, Forest and Climate Change in coordination with State Pollution Control Boards. However, the biggest impediment in current waste management and disposal mechanism is lack of systematic and robust system of waste management wherein various stakeholders and industry experts come together to formulate most sustainable and environment friendly waste management mechanism. By managing the waste, in a systematic manner, the country will not only save tremendously in its natural resources, but also create an environment friendly atmosphere for all.

The Bill thus aims to create a National Council for Waste Management that shall consult and advise the Union and various State Governments with respect to policy, programs, goals and operations of the waste management; review implementation of current legislations in force regarding the aforesaid subject matter; set up research and development centers across all States and Union Territories for efficient, cost effective and less polluting mechanisms to recycle and manage various types of wastes; guide industries to ensure manufacture of quality products which last longer, resulting in its delayed disposal as waste.

The Bill seeks to achieve the above-mentioned objectives.

MAHESH PODDAR

## FINANCIAL MEMORANDUM

Clause 3 of the Bill provides for establishment of National Council for Waste Management for suggesting, advising and consulting with Union and State Governments for management for waste disposal across the country. Clause 4 provides for establishment of the Council which will have six persons, including Chairperson. Clause 9 of the Bill, provides for salary, allowances and other conditions of service of Chairperson and Members. Clause 10 provides for appointment of necessary manpower, materials and other services for carrying out the purposes of this Act. Clause 11 provides for setting up research and development centres across all the States and Union Territories for efficient, cost effective and less polluting mechanisms to recycle and manage various types of wastes. Clause 12 provides that the Central Govt. shall provide funds for being utilised for the purposes of this Act.

The Bill, therefore, if enacted will involve expenditure from the Consolidate Fund of India. It is likely to involve an annual recurring expenditure of about one hundred crore from the Consolidated Fund of India.

No non-recurring expenditure is likely to be involved.

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MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 15 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

## II

## BILL NO. LXX OF 2019

*A Bill to provide for the establishment of an effective system to protect refugees and asylum-seekers by means of an appropriate legal framework to determine claims for asylum and to provide for the rights and obligations flowing from such status and matters connected therewith or incidental thereto.*

WHEREAS, the Constitution of India requires all persons to be treated in a fair and just manner consistent with the guarantees of equality, fairness and due process of law;

AND WHEREAS, the Supreme Court and the High Courts in India have extended the protection of certain fundamental rights to refugees and asylum-seekers;

AND WHEREAS, India has acceded to all major international human rights instruments and demonstrated its commitment to international law and human rights norms including the right to seek asylum and the principle of non-refoulement;

AND WHEREAS, India has a long tradition and experience of providing humanitarian assistance and protection to refugees and asylum-seekers;

AND WHEREAS, there is a need to consolidate, streamline and harmonize the varied practices, policies and standards applicable to refugees and asylum-seekers in India.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

## CHAPTER I

### PRELIMINARY

Short title,  
extent and  
commencement.

1. (1) This Act may be called the Refugee and Asylum Act, 2019.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Definitions.

2. (1) In this Act, unless the context otherwise requires—

(a) "appellate Board" means the National Appellate Board of Asylum established under section 24;

(b) "applicant" means an asylum-seeker who, after entering the national territory of India, has filed an application for asylum under this Act;

(c) "application for asylum" means an application for the grant of asylum made under section 11;

(d) "asylum" means refugee status recognized in terms of this Act;

(e) "asylum-seeker" means a foreigner who after entering the national territory of India expresses an intention to seek a grant of asylum;

(f) "Chairperson" means the Chairperson of the Commission appointed under section 19;

(g) "child" means any person under the age of eighteen years;

(h) "Commission" means the National Commission for Asylum established under section 18;

(i) "country of origin" means the country of nationality of the refugee or asylum-seeker, or, if he has no nationality, the country of his former ordinary residence;

(j) "climate change" means a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods;

(k) "dependent" in relation to an asylum-seeker or a refugee, includes the partner or spouse, any dependent child, aged or infirm family member of such asylum-seeker or refugee; or any person the Commission may consider, upon assessment, as member of a family taking into account the meaning of family in their culture and/or existence of economic dependency among them;

(l) "disaster" means serious disruption of the functioning of a community or a society at any scale due to hazardous events interacting with conditions of exposure, vulnerability and capacity, leading to one or more of the following: human, material, economic and environmental losses and impacts;

(m) "foreigner" means a person who is not a citizen of India or has not been recognized by the Central Government as having rights and obligations of an Indian citizen;

(n) "hearing" means the proceedings before the Commission or the Appellate Board, as the case may be, under the provisions of this Act;

(o) "Judicial Member" means a member of the Commission or the Appellate Board appointed as such and includes the President or the Chairperson, as the case may be, appointed under section 20 and under section 25;



(p) "Member" means a member, whether Judicial or Technical of the Commission or the Appellate Board and includes the President or the Chairperson, as the case may be appointed under section 20 and under section 25;

(q) "nationality" means the status of a person who is attached to a state by the tie of allegiance and includes but not limited to citizenship, membership of an ethnic, linguistic or racial group;

(r) "person" means any human being but does not include any company or association or body of individuals, whether incorporated or not;

(s) "persons with special needs" include unaccompanied children, disabled persons, aged or infirm persons, pregnant women, single mothers or single fathers with accompanying child or children or persons who are survivors of torture, rape or other serious psychological, physical or sexual violence;

(t) "prescribed" means prescribed by rules made under this Act;

(u) "President" means the President of the Appellate Board;

(v) "refugee" means an applicant whose application for asylum has been determined to meet the criteria provided under section 4 by the Commission or the Appellate Board, as the case may be, under the terms of this Act or who has been declared to be a refugee by a notification under section 35;

(w) "serious non-political offence" means any offence which may be specified by the Central Government by notification in the official Gazette;

(x) "Technical Member" means a Member of the Commission or the Appellate Board appointed as under section 25;

(y) "United Nations High Commissioner for Refugees" means any Office of the United Nations High Commissioner for Refugees in India.

**3.** In exercising the powers conferred by this Act, regard shall be had to the following considerations, namely—

Principles of  
refugee  
protection.

(a) that all foreigners who have faced or are at risk of facing persecution in their country of origin, and who enter India, whether directly from their country of origin or indirectly, or who are already present in India, are entitled to seek asylum;

(b) that care has to be taken to ensure that the principle of non-refoulement mentioned under section 8 is upheld;

(c) that the determination of applications for asylum must be by a fair and transparent system that shall abide at all times with the norms of due process;

(d) that asylum-seekers are entitled to interim legal protection and shall not be expelled or returned before a final decision on asylum is reached;

(e) that asylum-seekers and refugees are vulnerable persons deserving of basic social and economic protection;

(f) that the repatriation of a refugee to his country of origin shall be conducted in a safe and dignified manner and only after ensuring that the decision to repatriate is voluntary and informed;

(g) that the unity of a refugee's family shall be maintained;

(h) that the provisions of this Act shall apply to refugees without discrimination as to race, religion, sex, sexual orientation, nationality, ethnicity, place of birth;

(i) that the Commission shall co-ordinate all measures necessary for promoting the welfare and protection, assistance and legal support for refugees and formulate policy on refugee matters in accordance with international standards; and

(j) that the Commission shall ensure that economic and productive activities of a refugee do not have a negative impact on host communities, natural resources or the local environment and ensure sustainable use of resources in designated refugee hosting areas.

## CHATER II

## PRINCIPLES OF REFUGEE STATUS

Criteria for  
recognition as  
a refugee.

**4. (1)** A person qualifies as a refugee for the purposes of this Act if such person—

(a) is outside his country of origin and is unable or unwilling to return to or avail himself of the protection of that country because of a well-founded fear of persecution on account of race, religion, sex, sexual orientation or gender identity, nationality, ethnicity, membership of a particular social group or political opinion or has been displaced due to adverse effects of climate change, disasters or other environment factors or a combination of these reasons which has caused serious threat to his life, sustainability and physical integrity; or

(b) has left his country of origin owing to serious and indiscriminate threats of life, physical integrity or freedom resulting from armed conflict, generalized violence or internal conflicts, massive violation of human rights which his State is unable or unwilling to protect.

(2) the dependents of a person who qualifies as a refugee under this section shall also be deemed to be refugees.

Explanation I.—In the case of a person who qualified as a refugee is having more than one nationality, the term country of origin shall mean each of the countries of which he has nationality.

Explanation II.—In this section, a person shall be considered as a refugee where the conditions stipulated under clauses (a) or (b) of this section have taken place after he has left the country of this nationality or habitual residence.

Exclusion  
from Refugee  
Status.

**5. (1)** A person shall be excluded from protection under this Act if—

(a) he has committed a crime against peace, a war crime or a crime against humanity, as defined in customary international law or any international legal instrument dealing with any such crime which India has acceded to; or

(b) he has committed a serious non-political crime outside India prior to his entry into the national territory; or

(c) he has instigated, abetted or otherwise participated in committing the acts mentioned in sub-clauses (a) or (b); or

(d) has been convicted of any offence in India which is punishable by a term or imprisonment of at least 10 years; or

(e) has committed an act outside India that, if committed in India, would constitute an offence punishable by a term of imprisonment of at least 10 years.

(2) The exclusion of the applicant from protection under this Act shall not require the exclusion of his dependents where none of the reasons for exclusion applies to them.

Explanation.—In this section a person shall not be considered as a refugee where he has voluntarily left his country in order to take up residence elsewhere and in doing so was moved by the desire for change or adventure, or by family or other reasons of a personal nature or if he is moved exclusively by economic considerations, he will be considered an economic migrant.

Cessation of  
refugee status.

**6. (1)** A person shall cease to be a refugee for the purposes of this Act if—

(a) he can no longer refuse to avail himself of the protection of the country of his citizenship, because the circumstances in respect to which he was recognised as a refugee have ceased to exist; or

(b) he voluntarily re-avails himself of the protection of his country of origin; or

(c) he has acquired the citizenship of India; or

(d) he has acquired the citizenship of some other country and enjoys the protection of that country; or

(e) he has voluntarily re-established himself in the country which he left, or outside which he remained owing to fear of persecution; or

(f) he has voluntarily regained the citizenship that he had been deprived of; or

(g) he, having been stateless, is able to return to the country of former ordinary residence as the circumstances in respect to which he was recognised as a refugees no longer apply.

(2) In the assessment under clauses (a) and (g) of sub-section (1),—

(i) consideration shall be given to whether there is significant and profound changes in circumstances which are enduring and permanent in nature, upon which the status was granted, no longer apply or have changed significantly and permanently; and

(ii) due consideration shall further be given to any compelling reasons presented by the refugee concerned, arising out of previous persecution, for refusing to return to his country of origin or his former ordinary residence.

**7. (1)** The status of a person as a refugee may be cancelled for the purposes of this Act if—

Cancellation  
and  
revocation.

(a) it is found that the inclusion criteria provided by section 4 of the Act was not met at the time of the initial decision; or

(b) it is found that the exclusion criteria provided under section 5 of the Act had not been applied at the time of the initial decision; or

(c) other reliable information has come to light, after an individual has been formally recognized as a refugee by the Commission, indicating that the individual should not have been recognized, the Commission shall initiate procedure to re-examine its decision to assess whether it is appropriate to cancel the refugee Status.

(2) The cancellation procedure of refugee status may be initiated if there is reason to believe that recognition may have been granted erroneously as a result of one or more of the following factors:—

(a) he, or a third party acting on his behalf, misrepresented or concealed facts that were material to the determination of refugee status, with or without fraudulent intent; or

Grounds for  
commencing  
cancellation  
procedure.

(b) he is guilty of misconduct, including threats or bribery; or

(c) there was an error of fact or law in the granting of the status; or

(d) there was misconduct or administrative error at any stage in the hearing, including the wrongful issuance of relevant documents.

**8. (1)** Notwithstanding anything contained in this Act or any other law for the time being in force, no person may be refused entry into India or expelled or extradited or deported under any circumstances except for reasons contained in this Act or in any manner whatsoever if, as a result of such refusal, expulsion, extradition, deportation, return or other measure, such person is compelled to return to or remain in a country where:

Principle of  
Nonrefoulement.

(a) his life or freedom would be threatened on account of his race, religion, gender, sex, sexual orientation, nationality, ethnicity, membership of a particular social group or political opinion; or

(b) there are serious and indiscriminate threats to his life, physical integrity or freedom resulting from armed conflict, generalized violence or internal conflicts, massive violation of human rights against which the State is unable or unwilling to protect.

Provisions for  
removal from  
India.

**9.** (1) Subject to section 8, a refugee or asylum-seeker may be removed from India only if—

(a) the Commission has certified that the refugee or asylum-seeker falls within the grounds specified under sub-section (1) of section 5, or sub-section (1) of section 6 or section 7; or

(b) his application for asylum has been finally denied.

(2) The removal of a person on the grounds specified in sub-section (1) shall be effected only after such person has been duly informed, in writing, of the intention of the Central Government to remove him and given the opportunity to show cause against such removal, within such time and in such manner as may be prescribed.

(3) Where an order is made for the removal of a refugee or asylum-seeker from India, any dependent of such refugee or asylum-seeker, who has not been granted asylum, may be included in such an order and removed from India:

Provided that before any order for the removal of a dependent is made, such dependent shall be afforded a reasonable opportunity to make an application for asylum and he either fails to apply or his application for asylum is finally denied by the Appellate Board.

(4) The Central Government may, by an order in writing, cause any refugee or asylum seeker ordered to be removed from India, to be detained pending such removal:

Provided that no person shall be detained for period of more than thirty days unless there are sufficient reason existing, then the detention may extended for a period of another thirty days:

Provided further that the concerned refugee or asylum seeker shall be treated with dignity and in accordance with international standards:

Provided also that the detention shall not be punitive in nature.

(5) Where an order for removal is made, the concerned refugee or asylum-seeker shall be removed to his country of origin:

Provided that where such refugee or asylum-seeker wishes to be removed to a third country, he shall be afforded reasonable time to obtain approval from such country, for his removal to that country.

(6) An order for removal shall be made by Central Government in writing along with reasons and shall also contain the conditions and duration of detention, if any, and in a language and in terms which the concerned refugee or asylum seeker understands.

(7) An order for removal shall not be made until the final determination of an application for asylum under this Act.

(8) The Commission shall, in collaboration with the country of origin, the United Nations High Commissioner for Refugees and other partners, provide every possible assistance to facilitate the return of refugees against whom the order of removal is made.

Family  
Unification.

**10.** (1) A family member of an asylum-seeker, as provided for in this Act, shall be permitted to enter and remain in India until his case is finally decided.

(2) A family member of a recognized refugee, as provided for in this Act, shall be permitted to enter and remain in India.

(3) A family member of an asylum-seeker or recognized refugee in India shall be entitled to all the rights and be subject to the duties of the refugee or asylum-seeker.

(4) Nothing in this Section shall prevent a family member of a recognized refugee or asylum seeker in India to apply for a refugee status by themselves.

(5) Family members of a recognized refugee may apply for derivative refugee status.

Provided that individuals who obtain derivative refugee status shall enjoy the same rights and entitlements as other recognized refugees, and shall retain this status notwithstanding the subsequent dissolution of the family through separation, divorce, death, or the fact that a child reaches the age of majority:

Provided that the provision of section 6 and section 7 shall also apply to persons who have received derivative refugee status.

*Explanation:* The categories of persons who shall be considered eligible for derivative status shall include partner or spouses of the recognized refugee; the parents or primary caregivers of the recognized refugee who is under 18 years, as well as the dependents of the adult parent or caregiver; the minor siblings of a recognized refugee who is under 18 year and other family members where it is determined that there is a relationship of social, emotional or economic dependency exists between them and the Principal Applicant.

### CHAPTER III

#### PROCEDURE TO APPLY FOR ASYLUM

**11. (1)** Every asylum-seeker shall have the right to make an application for asylum addressed to the Commission in such manner as may be prescribed. Application for asylum.

(2) Without prejudice to section 35, where a police officer or any other person exercising powers under the Foreigners Act, 1946, intercepts a foreigner who is seeking entry into India at any port of entry or international border or within India and who expresses the intention to make an application for asylum, such police officer or person shall not deny such entry to such asylum-seeker and shall give him the necessary information regarding the procedure for asylum, and assist him in making an application for asylum under this Act:

Provided that a person already residing in India on Long Term Visa shall make his application for the asylum within six months of the establishment of the Commission.

(3) An application for asylum shall be made to the Commission within sixty days following the asylum seeker's entry into India:

Provided that the Commission may extend the period for making an application for asylum if it is satisfied that the asylum-seeker was prevented for sufficient reasons from filing the application:

Provided further that the Commission may, after due consideration, admit an application for asylum after the said period of sixty days, where such application is based on a claim arising as a consequence of events which have occurred in the asylum-seeker's country of origin since his departure, or because of a significant intensification of pre-existing factors since his departure, or because of a change in his personal circumstances:

Provided also that the Commission may, after due to consideration, admit a fresh application for asylum made by the asylum-seeker after the said period of sixty days, where his previous application for asylum was finally rejected, provided however that such fresh application for asylum shall arise out of change in the asylum-seeker's personal circumstances or change in the circumstances in his country of origin.

(4) The Commission may permit a person to submit his application for refugee status through another person if he is unable to submit his own application due to circumstances beyond his control, and in such cases a written consent of the asylum-seeker shall be attached to the application made on his behalf.

(5) The applicant may apply on behalf of accompanying family members who are not his dependents but whose applications are on the same grounds, and in such cases a written consent of the adult family members shall be attached to the application made on their behalf.

(6) No asylum-seeker shall be detained or subjected to any penalty solely on account of his illegal entry into, or stay in India, pending the determination of his application for asylum.

(7) Every applicant shall, upon submitting the application for asylum, be issued a registration document by the Commission in the prescribed form, valid for six months and containing identity information of the applicant and, where applicable, the identity information of his dependents and which shall enable those included in it to stay in India pending the determination of the application for asylum, and shall be issued without being subject to any fee:

Provided that where the decision on the application for asylum is not issued before the expiry of the registration document, the document shall be renewed for a further period of sixty days at a time, until a decision is issued.

(8) Where the application for asylum is rejected by the Commission, the registration document shall be renewed for a period for sixty days from the date of such decision:

Provided that where the applicant files and appeal application before the Appellate Board, the Commission shall renew the registration document as provided under sub-section (2) of section 13.

(9) Where the asylum-seeker withdraws or abandons his application, the Commission may discontinue the processing of application for refugee status:

Provided that where the asylum seeker intends to withdraw the application, the Commission shall inform the asylum seeker of the consequences of withdrawal:

Provided also that any request by an applicant to withdraw an application shall recorded in writing, signed by the applicant and the legal representative, if appointed, as confirmation of the fact that the applicant was informed of the consequences of the withdrawal.

*Explanation:* For the purpose of this sub-section, grounds for implicit withdrawal or abandonment shall not encompass, nor be applied to, applicants who have no intention of abandoning the procedure, but who may have failed to comply with procedural obligations, where the failure is due to circumstances beyond the applicant's control, or where there is a reasonable explanation.

(10) (a) Where before a decision is made to apply an exclusion clause under section 5 in an individual case, the Commission shall give applicant concerned the opportunity to consider and comment on the evidence on the basis of which exclusion may be decided.

(b) The Notification of intent to cancel or revoke shall be given within such time as may be prescribed so as to permit preparation of the interview or hearing;

(c) The burden of proof with regard to exclusion shall rest with Central Government;

Provided that in circumstances where a presumption of individual responsibility is justified, the burden of proof shall be reversed and the individual concerned shall be required to rebut the presumption.

Commission  
to determine  
application  
for asylum.

**12. (1)** The Commission shall examine every application for asylum submitted by the asylum seeker under section 11 and, after giving an opportunity to the applicant to be heard, and after making such further inquiry as is necessary under this Act, determine whether the applicant is entitled to be recognised as a refugee in accordance with the principles provided under this Act.

(2) During the assessment, under sub-section (1), the Commission shall:

(a) ensure that the applicant is provided with relevant information, in a language he understands, in particular relating to the procedures for refugee status determination and right and obligations of refugees and asylum-seekers;

(b) ensure that the applicant is given reasonable time and opportunity to present his case;

(c) ensure that the personnel conducting the refugee status determination has adequate knowledge of Indian and international refugee laws; is competent to take into account the particular circumstances of asylum-seekers; and is selected having due regard to the applicant's preference to be interviewed by a member of a particular gender;

(d) take into primary consideration the best interests of the child when examining and making decision on the application of a child for refugee status.

(e) obtain the advice of a medical expert on the nature and degree of mental illness where the applicant is having mental or emotional disturbances which may impede a normal examination of his case.

(f) be responsive to the trauma and emotion of asylum-seeker in cases of victims of sexual violence or other forms of trauma and shall stop an interview where the asylum-seeker becomes emotionally distressed and if needed, second and subsequent interviews may be conducted in order to establish trust and obtain all necessary information including psychological or medical evidence.

(3) The Commission shall, within three months of the conclusion of the hearing, issue a decision in accordance with section 15, granting or denying asylum to the applicant.

Provided that where the decision by the Commission is pending and has not been issued within the period referred to in sub-section (3), such a decision shall be issued within a period of ninety days.

(4) Where an application for asylum is accepted by the Commission, or where the appeal application is accepted by the Appellate Board, the Commission shall issue a refugee certificate containing identity information and indicating the legal status of the refugee and his dependents where applicable and which shall enable those included in it to stay in India legally.

(5) Where an application for asylum is rejected the Commission shall issue a rejection letter containing detailed reasons for the decision.

**13. (1)** An applicant aggrieved by a decision of the Commission made under this Act, may, within sixty days from the date of such decision and in such manner and form, as may be prescribed, prefer an appeal to the Appellate Board:

Appeal to lie to the Appellate Board.

Provided that the Appellate Board may accept an appeal application after the stipulated time period if reasonable cause for the delay is shown.

(2) On receipt of an appeal application under sub-section (1), the Appellate Board shall direct the Commission to renew the registration document issued under sub-section (7) of section 11 for a period of sixty days at a time, until a final decision is issued.

(3) The Appellate Board may, after giving an opportunity to the applicant to be heard, and after making such further inquiry as is necessary under this Act, confirm modify or set aside the decision of the Commission.

(4) During the hearing under sub-section (3), the applicant shall be entitled to all the rights set out in sub-section (2) of section 12.

(5) The Appellate Board shall, within three months of the conclusion of the hearing, issue a decision in accordance with section 15.

(6) Where an application for asylum is accepted at appeal, the Appellate Board shall direct the Commission to issue a refugee certificate as under sub-section (4) of section 12.

(7) Where an appeal application is rejected, the Appellate Board shall issue a rejection letter containing reasons for the decision.

(8) The decision of the Appellate Board shall be final.

Interview.

**14.** (1) All hearing by the Commission under section 12 and the Appellate Board under section 13 shall include an in-person interview with the applicant within ninety days of the receipt of the application for asylum, with a view to reaching an effective and fair decision:

Provided that where the applicant is unable to be physically present for the in-person interview, the Commission or, as the case may be, the Appellate Board, may make alternative arrangements to ensure that the applicant has the opportunity to be heard.

(2) During the asylum interview, the applicant shall be given the opportunity to express himself in the best possible manner and upon the applicant's request, his lawyer shall be permitted to attend the interview as an observer.

(3) The Commission shall conduct the entire hearing under such principles of confidentiality as may be prescribed.

(4) The Commission shall give due consideration to the circumstances of persons with special needs during the entire hearing.

(5) The Commission shall during the assessment ensure the presence of a qualified interpreter during all the stages of the hearing giving due regard to the applicant's preference to have an interpreter of a particular gender.

(6) The Commission shall ensure that the interviewers and interpreters shall also be aware of and responsive to any cultural or religious sensitivities or personal factors such as age and level of education.

(7) The Commission shall ensure that all asylum hearings are recorded in writing.

(8) Where dependents are included in the application for asylum, only those above thirteen years of age shall be interviewed by the Commission.

(9) The Commission may invite a representative of United Nations High Commissioner for Refugees to participate as an observer.

Decision to be reasoned.

**15.** (1) All decisions of the Commission and Appellate Board shall contain, in writing, the reasons for arriving at the decision, and a copy of the same shall be furnished to the Applicant.

(2) The decisions, judgements, decrees or orders of the Commission and Appellate Board shall be published, as prescribed, with due regard to principles of confidentiality.

Right to legal representation.

**16.** The asylum seeker or refugee, as the case may be, shall have the right to seek the assistance of a legal practitioner of his choice.

Provided where it appears to the Commission that the asylum seeker does not have sufficient means to engage a pleader, the Commission shall assign a legal practitioner for his legal assistance at the expense of the State.

Explanation.—For the purposes of this section legal assistance shall include legal representation throughout the hearing conducted by the Commission or the Appellate Board, as the case may be.

Confidentiality.

**17.** (1) No member of the Commission, employee or agent shall disclose information acquired under this Act except—

(a) in the course of his duties under this Act; or

(b) with the consent of the Commission



## CHAPTER IV

## CONSTITUTION, FUNCTIONS AND POWERS OF AUTHORITIES

**18.** The Central Government shall, by notification, establish, with effect from six months of coming into force of this Act as may be specified therein, a Commission to be known as the National Commission for Asylum to exercise the jurisdiction, powers and authority conferred on such Commission by or under this Act.

Establishment  
of the  
Commission.

**19.(1) The Commission shall consist of—**

Composition  
of  
Commission.

**(a) a full time Chairperson;**

**(b) not less than ten but subject to maximum of twenty full time Judicial Members as the Central Government may, from time to time, notify; and**

**(c) not less than ten but subject to maximum of twenty full time Expert Members, as the Central Government may, from time to time, notify;**

**(d) Provided that a representative of the United Nations High Commissioner for Refugees may be invited by the Commission to participate as an observer at its sittings.**

**(2) The Chairperson may, if considered necessary, invite any one or more person having specialized knowledge and experience in a particular case before the Commission to assist the Commission in that case.**

**(3) The Central Government may, by notification, specify the ordinary place or places of setting of the Commission, and the territorial jurisdiction falling under each such place of sitting.**

**(4) The Central Government may, in consultation with the Chairperson make rules regulating generally the practice and procedure of the Commission including but not limited to—**

**(a) the rules as to the persons who shall be entitled to appear before the Commission;**

**(b) the rules as to the procedure for hearing applications and appeals and other matters including the circuit procedure for hearing at a place other than the ordinary place of its sitting falling within the jurisdiction referred to in sub-section (3), pertaining to the applications and appeals;**

**(c) the minimum number of Members who shall hear the applications and appeals in respect of any class or classes of applications and appeals:**

**Provided that the number of Expert Members shall, in hearing an application or appeal, be equal to the number of Judicial Members hearing such application or appeal;**

**(d) rules relating to transfer of cases by the Chairperson from one place of sitting (including the ordinary place of sitting) to other place of sitting.**

**20. (1) The Chairperson shall be a person who is or has been a Judge of a High Court for five years.**

Qualification  
for  
appointment  
of  
Chairperson  
and Judicial  
Members and  
Expert  
Member of  
Commission.

**(2) A person shall not be qualified for appointment as a Judicial Member unless he—**

**(a) is, or has been, a judge of a High Court; or**

**(b) is, or has been, a District Judge for at least five years; or**

**(c) has, for at least ten years been an advocate of a court.**

**Explanation.—**For the purposes of clause (c), in computing the period during which a person has been an advocate of a court, there shall be included any period during which the

person has held judicial office or the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law after he become an advocate.

(3) A person shall not be qualified for appointment as an Expert Member, unless he,—

(a) has a Bachelor degree in Law, Political Sciences or International Relations, social work or psychology: and

(b) is a person of proven ability, integrity and standing having special knowledge and experience having a experience of fifteen years in the relevant field including five years practical experience in the field of refugee law and policy, or not less than ten years of litigation experience in the field of human rights

(4) The Chairperson, Judicial Member and Expert Member of the Commission shall not hold any other office during their tenure as such.

(5) The Chairperson and other Judicial and Expert Members shall not, for a period of two years from the date on which they cease to hold office, accept any employment in, or connected with the management or administration of, any person who has been a party to a proceeding before the Commission under this Act:

Provided that nothing contained in this section shall apply to any employment under the Central Government or a State Government or local authority or in any statutory authority or any corporation established by or under any Central, or State Act or a Government company as defined in the Companies Act, 2013.

8 of 2013.

Functions of  
the  
Commission.

**21. (1)** The Commission shall determine:

(a) applications for asylum, in accordance with the principles under this Act;

(b) cessation of refugee status in accordance with section 6; and

(c) cancellation or revocation of refugee status in accordance with section 7.

(2) The Commission shall issue documentation in accordance with section 11 and section 12.

(3) The Commission may also inquire, *suo motu* or on an application presented to it either by an asylum-seeker, refugee or by someone acting on their behalf, in respect of the following—

(a) the detention of an asylum-seeker; or

(b) any conditions or consequent orders to be passed following the determination of asylum; or

(c) the repatriation of a refugee; or

(d) any other order that may be necessary under this Act.

(4) The Commission shall maintain a record of the details, as prescribed, of applicants who have been granted refugee status under the terms of this Act and shall make the same periodically available to the Central Government.

(5) The Commission may consult agencies of the United Nations, non-governmental organizations or experts for the purposes of this Act.

(6) The Commission shall undertake such measures and give such directions or pass such orders as are necessary for the purpose of discharging its functions under this Act.

Powers of the  
Commission.

**22. (1)** In the discharge of its functions, the Commission shall be guided by the principles of natural justice and, subject to the other provisions of this Act and of any rules made by the Central Government, the Commission shall have the power to regulate its own procedure.

(2) The Chairperson and the members shall have the power to delegate to one another such powers or functions as may be prescribed.

(3) In particular and without prejudice to the generality of the foregoing provisions, the powers of the Commission shall include the power to determine the extent to which persons interested, or claiming to be interested, in the subject-matter of any proceeding before it may be allowed to be present or to be heard, either by themselves or by their representatives, or to examine witnesses, or otherwise take part in the proceedings:

Provided that any such procedure as may be prescribed or followed shall be guided by the principles of natural justice.

5 of 1908. (4) The Commission, for the purposes of any inquiry or for any other purpose under this Act, shall have the same powers as vested in a civil court under the Code of Civil Procedure, 1908, while trying suits in respect of the following matters, namely—

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence;

(c) the reception of evidence on affidavit;

(d) the requisitioning of any public record from any court or office;

(e) the issuing of any commission for the examination of witnesses; and

(f) any other matter which may be prescribed.

(5) The Commission may cause an inquiry to be made into the compliance of its orders or directions made in the exercise of its powers under this Act, and may impose such penalties as may be prescribed.

(6) The Commission, with a view to rectifying any mistake apparent from the record, shall have the power to amend any order or direction passed by it under the provisions of this Act:

Provided that the Commission shall not, while rectifying any mistake apparent from the record, amend the substantive part of such order or direction.

**(7) The Commission may, appoint such administrative, technical, and other staff as it may consider necessary.**

**23. (1)** The Commission shall ensure that—

(a) women refugee and asylum-seeker shall have equal enjoyment of rights and protections enshrined under relevant laws in particular, and specific measures may be taken to protect them from gender based violence and exploitation;

(b) a child refugee and asylum-seeker shall enjoy the rights and protections enshrined under relevant laws in particular and specific measures may be taken to protect those who have been subjected to rape, torture, or other physical or psychological abuse and protect them from abuse, neglect, exploitation and trafficking; and

(c) special protection and assistance to other refugees and asylum-seekers with specific needs may be provided commensurate with their needs.

Special protection to persons with specific needs.

**24. The Central Government shall, by notification, constitute, with effect from such date as may be specified therein, an Appellate Board to be known as the National Appellate Board of Asylum consisting of a President and such number of Judicial and Technical Members, not exceeding eleven, as the Central Government may deem fit, to be appointed by it by notification, for hearing appeals against the orders of the Commission.**

Establishment of the Appellate Board.

**25. (1)** The Appellate Board shall consist of a President, and other Members appointed by the Selection Committee under section 28.

Qualifications of President and Members of Appellate Board.

(2) The President shall be a person who is or has been a Judge of the Supreme Court or the Chief Justice of a High Court.

(3) A Judicial Member shall be a person who is or has been a Judge of a High Court or is a Judicial Member of the Commission for five years.

(4) A Technical Member shall be a person of proven ability, integrity and standing having special knowledge and experience, of not less than twenty-five years in international law, human rights, refugee law and policy.

Functions of  
the Appellate  
Board.

**26.** (1) The Appellate Board may, *suo motu* or on the presentation of an appeal application, examine, confirm, modify or set aside any decision, direction, judgment, decree or order of the Commission.

(2) The Appellate Board may also inquire on an appeal application presented to it either by an asylum-seeker or by someone acting on his behalf, in respect of any decision or order given by the Commission under sub-section (3) of section 22.

(3) The Appellate Board shall direct the Commission to issue documentation in accordance with section 13.

(4) The Appellate Board may consult agencies of the United Nations, non-governmental organizations or experts for the purposes of this Act.

(5) The Appellate Board shall undertake such measures and give such directions or pass such orders as are necessary, for the purpose of discharging its functions under this Act.

(6) The Appellate Board shall have the power to review any decision, judgment, decree or order made by it in such manner as may be prescribed.

Powers of the  
Appellate  
Board.

**27.** (1) In the discharge of its functions, the Appellate Board shall be guided by the principles of natural justice and, subject to the other provisions of this Act and any rules made by the Central Government, the Appellate Board shall have the power to regulate its own procedures.

(2) The President and the Members of the Appellate Board shall have the power to delegate to one another such powers or functions as may be prescribed.

(3) In particular and without prejudice to the generality of the foregoing provisions, the powers of the Appellate Board shall include the power to determine the extent to which persons interested, or claiming to be interested, in the subject-matter of any proceeding before it may be allowed to be present or to be heard, either by themselves or by their representatives, or to examine witnesses or otherwise take part in the hearing:

Provided that any such procedure, as may be prescribed, or followed shall be guided by the principles of natural justice.

(4) The Appellate Board, for the purposes of any inquiry or for any other purpose under this Act, shall have the same powers as vested in a civil court under the Code of Civil Procedure, 1908, while trying suits in respect of the following matters, namely,—

5 of 1908.

(a) summoning and enforcing the attendance of any person from any part of India and examining him on oath;

(b) the discovery and production of any document or other material object producible as evidence;

(c) the reception of evidence on affidavit;

(d) the requisitioning of any public record from any court or office;

(e) the issuing of any commission for the examination of witnesses; and

(f) any other matter which may be prescribed.

(5) The Appellate Board may cause an inquiry to be made into the compliance of its orders or directions made in the exercise of its powers under the Act and impose such penalties as may be prescribed.

(6) The Appellate Board, with a view of rectifying any mistake apparent from the record, shall have the power to amend any order or direction passed by it under the provisions of this Act:

Provided that the Appellate Board shall not, while rectifying any mistake apparent from the record, amend the substantive part of such order or direction.

**(7) The Appellate Board may, appoint such administrative, technical and other staff as it may consider necessary.**

**28. (1)** The President of the Appellate Board and the Chairperson and Judicial Members of the Commission, shall be appointed by Central Government after consultation with the Chief Justice of India.

Selection of  
Members of  
Commission  
and Appellate  
Board.

(2) The Members of the Commission and the Technical Members of the Appellate Board shall be appointed on the recommendation of a Selection Committee consisting of—

(a) Chief Justice of India or his nominee—Chairperson;

(b) a senior Judge of the Supreme Court or a Chief Justice of High Court—Member;

(c) Secretary in the Ministry of External Affairs—Member;

(d) Secretary in the Ministry of Law and Justice—Member;

(e) Secretary in the Ministry of Women and Child Development—Member;

(f) Secretary in the Ministry Labour and Employment—Member;

(g) Secretary in the Ministry of Human Resource Development—Member; and

(h) Secretary in Ministry of Health and Family Welfare—Member.

(3) The Secretary, Ministry of Home Affairs shall be the Convener of the Selection Committee.

(4) The Selection Committee shall determine its procedure for recommending persons under sub-section (2).

(5) No appointment of the Members of the Commission or the Appellate Board shall be invalid merely by reason of any vacancy or any defect in the constitution of the Selection Committee.

**29. (1) At the time of appointing the President, Chairperson or Member, the Central Government shall satisfy itself that such person does not and will not have any financial or other interest as is likely to affect prejudicially his functions as such President, Chairperson or Member.**

Term of  
office,  
Conditions of  
Service, etc.  
of the  
President,  
Chairperson  
and the  
Members.

**(2) The President, Chairperson or Member shall hold office for a term of five years from the date on which he enters his office and shall be eligible for reappointment for a further term of five years:**

**Provided that no person shall hold office after he has attained the age of seventy years.**

(3) Notwithstanding anything contained in sub-section (2), the President, Chairperson Member may—

(a) by notice in writing under his hand and addressed to the concerned authority of the Central Government, resign from his office at any time; or

(b) be removed from office in accordance with the provisions of section 30.

(4) A vacancy caused by the resignation or removal of the President, Chairperson or Member under sub-section (3) shall be filled by fresh appointment.

(5) In the event of a vacancy in the post of the President or Chairperson, one of the Judicial Members as the case may be, as the Central Government may by notification authorize in this behalf, shall act as the President or Chairperson, till such date on which a new President or Chairperson, appointed in accordance with the provisions of this Act, enters office.

(6) When the President or Chairperson is unable to discharge his functions owing to absence, illness or any other cause, such one of the Judicial Members, as the case may be, as the President or Chairperson may authorize in writing in this behalf, shall discharge the functions of the President or Chairperson, till such date on which the President or Chairperson resumes his duties.

(7) The salaries and allowances payable to, and the other terms and conditions of service of, the President, Chairperson and Member shall be such as may be prescribed:

**Provided that neither the salary and allowances nor the other terms and conditions of service of the President, Chairperson or Member shall be varied to his disadvantage after his appointment.**

(8) The President or Chairperson, upon ceasing to hold such office, shall not hold any appointment under the Central Government or under any State Government for a period of two years from the date on which he ceases to hold such office, except where the Chairperson is appointed to the Appellate Board, subject to the provisions of this Act.

(9) A Member, upon ceasing to hold such office, shall not hold any appointment under the Central Government or under any State Government for a period of two years from the date on which he ceases to hold such office, except where he is appointed Chairperson, subject to the provisions of this Act.

Removal of  
the President,  
Chairperson  
and Member  
from Office.

**30. (1)** The Central Government may remove from office a President, Chairperson or Member, who,—

(a) is adjudged an insolvent; or

(b) engages during his term of office in any paid employment outside the duties of his office; or

(c) is unfit to continue in office by reason of infirmity of mind or body; or

(d) is of unsound mind and stands so declared by a competent court; or

(e) is convicted for an offence which in the opinion of the Central Government involves moral turpitude; or

(f) has acquired such financial or other interest as is likely to affect prejudicially the functions of his office; or

(g) has so abused his position as to render his continuance in office prejudicial to the public interest.

(2) Notwithstanding anything contained in sub-section (1), neither the President nor the Chairperson or Member shall be removed from office on the grounds specified in clause (f) or clause (g) of that sub-section unless the Supreme Court, on a reference being made to it in this behalf by the Central Government, has, on an inquiry held by it in accordance with such procedure as it may be specified in this behalf, has reported that the concerned President, Chairperson or Member ought, on such grounds, to be removed.

Secretary,  
Officers and  
Other  
Employees of  
Commission  
or Appellate  
Board.

**31. (1)** The Central Government shall appoint a Secretary to the Commission and a Secretary, by whatever name called, to the Appellate Board to exercise and perform, under the control of the Commission or, as the case may be, Appellate Board, such powers and duties as may be prescribed or as may be specified by the Commission or the Appellate Board.

**(2) The Secretary to the Commission or the Appellate Board, as the case may be, shall have the powers of general superintendence, direction and control in respect of all administrative matters of the Commission or the Appellate Board:**

**Provided that the Secretary to the Commission or the Appellate Board may delegate such of his powers, as he may think fit, to any other officer of the Commission or the Appellate Board.**

**(3) The salaries and allowances payable to, and the conditions of service of, the Secretary and other officers and employees of the Commission and the Appellate Board shall be such as may be prescribed.**

**32.** No act or proceeding of the Commission, or, as the case may be, the Appellate Board, shall be questioned on the ground merely of the existence of any vacancy or defect in the appointment of the President, Chairperson or Member, or any defect in the appointment of a person acting as the President, or Member.

Vacancies, etc. not to invalidate proceedings of the Commission and the Appellate Board.

45 of 1860.

**33.** The President, Chairperson, Members and other permanent staff of the Commission and the Appellate Board shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

President, Chairperson and Members to be Public Servants.

2 of 1974.

**34.** The Commission and the Appellate Board shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 and every proceeding before the Commission or the Appellate Board shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196, of the Indian Penal Code, 1860.

Proceedings before Commission or Appellate Board to be Judicial Proceedings.

45 of 1860.

## CHAPTER V

### LARGE MOVEMENTS OF REFUGEES

**35. (1)** The Central Government may, by notification in the Official Gazette, declare such class of persons in a large movements that meet the criteria set out in section 4 to be refugees as defined under clause (v) of section 2.

Power of the Central Government with Respect to large Movements of Refugees.

(2) When recognizing a group of asylum-seekers as refugees in accordance with this section, the Central Government shall, in consultation with United Nations High Commissioner for Refugees in India, issue a detailed Directive containing a description of the events in the country of origin or former habitual residence of the asylum-seekers underlying the decision, the characteristics of the group of beneficiaries to whom the decision applies and the applicable date of the decision.

(3) The persons who have crossed an international border as part of a large movements but are not declared to be refugees by a notification of the Central Government under sub-section (1) shall be allowed to make an application for asylum under section 11 of this Act.

**36. (1)** The Central Government may cause all class of persons notified under section 35 to register their names in such form and manner as may be prescribed.

Registration.

(2) A refugee who has registered his name in accordance with sub-section (1) shall be issued an identity card in such form and manner as may be prescribed, which shall entitle him to all of the rights set out in section 41.

**37. (1)** The Central Government may, by order, impose reasonable restrictions on the movement or location of large movements refugees:

Special provisions with regard to movement, etc.

Provided that nothing in this sub-section shall impair the right of a refugee to seek and enter employment outside the designated area in such manner as may be prescribed.

(2) The Central Government may, by order in writing, cause any refugee found violating the restrictions imposed under sub-section (1) to be detained.

(3) Nothing in this section shall apply to any refugee who has been granted asylum in India following an application for asylum made under section 11.

Modification  
in notification  
concerning  
large  
movement of  
refugees.

**38. (1)** The Central Government may, by notification in the Official Gazette, extend, alter, substitute or withdraw a notification concerning large movement of refugees made under section 35:

Provided that such extension, alteration, substitution or withdrawal shall apply only to asylum-seekers arriving after the date of notification:

Provided further that such notification shall be issued on the grounds of public order, public health or national security.

Explanation (1).—Nothing in this section shall affect the individual refugee status granted under section 4 of this act.

(2) Any action revoking or altering the grant of refugee status to large movements or refugees shall be reviewed by the Commission.

## CHAPTER VI

### PROVISIONS RELATED TO VOLUNTARY REPATRIATION

Voluntary  
repatriation.

**39. (1)** A refugee shall have the right to a free and informed choice to seek to repatriate, in safety and with dignity, to his country of nationality or former habitual residence.

(2) Subject to the provisions of this Act, the Central Government may assist in repatriation refugees to their country of origin and for this purpose. The Central Government shall carry out any voluntary repatriation activities in cooperation with international organizations, public institutions and agencies, and civil society organizations.

(3) A refugee who wishes to be voluntarily repatriated to his country of origin shall make a written application to the Commission in such form and manner as may be prescribed.

(4) No refugee may be repatriated unless the Commission is satisfied, after conducting an inquiry, that the written application for repatriation is voluntary and genuine and that a repatriation to the country of origin is possible in a safe and dignified manner.

(5) The Commission shall, in collaboration with the country of origin, the United Nations High Commissioner for Refugees and other partners, provide every possible assistance to facilitate the voluntary, safe and dignified return of refugees who request repatriation.

(6) Any order of repatriation by the Central Government shall be placed before the chairperson for his information and for such further orders of directions as he may deem necessary and in accordance with non-refoulement provisions.

(7) No order of repatriation of the Central Government shall be implemented unless it has received the approval of the Commission.

## CHAPTER VII

### RIGHTS OF REFUGEES AND ASYLUM-SEEKERS

**40. (1)** Subject to the provisions of this Act, every refugee or asylum seeker in India—

(a) shall be entitled to the rights and be subject to the obligations contained in the international conventions to which India is party; and

(b) shall be subject to all laws in force in India in so far as they are not inconsistent with this Act.



41. (1) A refugee who has been granted asylum in pursuance of an application for asylum under section 11 and class of persons notified as refugees under section 35 shall be entitled to:

Protection and general rights of refugees.

(a) right to residence by way of a formal written recognition of asylum in the form and manner as may be prescribed under section 13 and section 14 that constitutes an enforceable basis for his continued residence in India;

(b) Identity paper and travel document of such nature described in section 44:

**Provided that the issued travel document shall enable the refugee to travel outside of India on written application to the Commission, unless there are security reasons or public order concerns that require otherwise;**

(c) receive free and compulsory primary education;

(d) access to secondary education; higher education; technical and vocation education and training; and adult and non-formal education within available resources and subject to the education policy of India;

(e) receive the most favorable treatment as accorded to foreign nationals in respect to education other than primary education, in particular, as regards access to studies, the recognition of foreign school certificates, diplomas and degrees, the remission of fees and charges and the award of scholarships;

(f) the same healthcare rights and services that apply to Indian citizens;

(g) engage in wage earning employment in the same circumstance as the most favorable treatment accorded to foreign nationals pursuant to relevant laws;

(h) engage, on his own account, including, in agriculture, industry, small and micro enterprise, handicrafts and commerce, and to establish business organizations, in the same circumstance as the most favorable treatment accorded to foreign nationals pursuant to relevant laws;

(i) academic credentials authenticated by the competent government authority, and who desires to practice his profession, may be accorded the most favorable treatment as accorded to foreign nationals in areas permitted to foreign nationals;

(2) There shall not be any discrimination between refugees and Indian citizens who are engaged in activities stipulated under this section.

(3) Refugees who are engaged in activities stipulated under this section, shall be entitled to the rights conferred and be subjected to the obligations imposed by applicable national laws.

(4) Notwithstanding this section, any refugee shall have no right to be employed on regular basis in the National Defence, Security, Foreign Affairs and other similar offices.

(5) (i) Every Refugee shall have a right to choose his place of residence and move freely within the territory of India, subject to any reasonable restrictions that may be imposed in the public interest;

(ii) right to move relevant courts of law by appropriate proceedings for the enforcement of the relevant rights conferred under the Constitution and the other laws in India;

(iii) may have access to free legal counselling or assistance provided by the United Nations High Commissioner for Refugees or in accordance with the laws of India;

(iv) shall be entitled to fair and just treatment in accordance with due process and procedure established by law;

(v) shall have freedom from discrimination on the basis of race, religion, sex, nationality, ethnicity, place of birth or any of them; and

(vi) shall have the right to open a personal bank account, deposit, transfer or withdraw money and obtain other banking services, same as any other citizen, using identification document issued by the Commission.

(6) Refugees shall not be subject to imposition of any duty, charge or tax, of any description whatsoever, higher than imposed on citizens in the same circumstances.

Rights of  
asylum-  
seekers.

**42.** (1) An asylum-seeker whose application for asylum under section 11 is pending, shall be entitled to:

- (a) a temporary identity document that constitutes an enforceable basis for his continued presence in India;
- (b) seek and enter employment in accordance with government policy;
- (c) the same healthcare rights and services that apply to Indian citizens;
- (d) free and compulsory primary education;
- (e) freedom from discrimination on the basis of race, religion, sex, nationality, ethnicity, place of birth or any of them;
- (f) the right to move relevant courts of law by appropriate proceedings for the enforcement of rights conferred by the relevant laws in India; and
- (g) protection against arbitrary or prolonged detention.

Rights not to  
be more than  
citizens.

**43.** The rights and benefits extended to refugees or asylum-seekers shall not be construed to provide more rights and benefits than those accorded to citizens.

Identity and  
travel  
documents.

**44.** (1) All refugees or asylum-seekers shall be entitled to a legally enforceable document of identity issued by the Central Government which shall mention—

- (a) the identity number of the holder, issued in the prescribed manner;
- (b) the holder's legal status in India;
- (c) the holder's surname, forename(s), sex, date of birth, and place or country where he was born;
- (d) the country of which the holders is a citizen, if any; and
- (e) a recent photograph of the holder.

(2) The document of identity shall be valid for a period of five years and may be renewed for such period as may be prescribed.

(3) The document of identity shall bear the seal of the Government authority that issues it.

(4) A refugee whose grant of asylum was made in pursuance of an application for asylum under section 11 shall be entitled to a legally enforceable document authorising his travel from and to India, subject to such restrictions as may be specified in this regard by the Central Government.

## CHAPTER VIII

### TECHNICAL ASSISTANCE

Technical  
Assistance.

**45.** The Central Government, the Commission or the Appellate Board, as the case may be, may seek the good offices of the United Nations or other relevant agencies for its expertise, technical assistance and guidance in relation to any matter arising under this Act.

## CHAPTER IX

### FINANCE, AUDIT AND ANNUAL REPORT

Grants by the  
Central  
Government.

**46.** (1) **The Central Government, shall after due appropriation made by Parliament, by law in this behalf, pay to the Appellate and the Commission Board, by way of grants, such sums of money as the Central Government may think fit for being utilised for the purposes of this Act.**

(2) The Commission and the Appellate Board may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

**47.** (1) The Appellate Board and the Commission shall maintain proper accounts and other relevant records, and prepare an annual statement of accounts, in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

Accounts and  
Audit.

(2) The Accounts of the Appellate Board and the Commission shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Appellate Board and Commission to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General or any person appointed by him in connection with the audit of the accounts of the Appellate Board and the Commission under this Act, shall have the same rights, privileges, and authority in connection with such audit, as the Comptroller and Auditor-General generally has in connection with the audit of Central Government accounts:

Provided further that the Comptroller and Auditor-General shall, in particular, have the right to demand the production of books accounts, connected vouchers and other documents and papers, and to inspect any of the offices of the Commission and the Appellate Board.

(4) The accounts of the Appellate Board and the Commission as certified by the Comptroller and Auditor-General or any other person appointed by him in this behalf, together with the audit report thereon, shall be forwarded annually to the Central Government by the Commission and the Appellate Board.

(5) The Central Government shall cause the audit report forwarded under sub-section (4) to be laid before each House of Parliament as soon as may be after it is received.

**48.** (1) The Appellate Board and the Commission shall prepare, once in every year, in such form and at such time as may be prescribed, an annual report giving a full account of its activities during the previous year, copies of which shall be forwarded to the Central Government.

Annual  
Report.

(2) A copy of the report received under sub-section (1) shall be laid, as soon as may be after it is received, before each House of Parliament.

## CHAPTER X

### MISCELLANEOUS

**49.** (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.

Power to  
make Rules.

(2) In particular, and without prejudice to the generality of the foregoing provision, such rules may provide for—

(a) the procedure for removing a refugee or asylum-seeker from India under section 9;

(b) the detention of refugees or asylum-seekers;

(c) the procedure regarding an application for asylum, subject to the provisions contained under this Act;

(d) the salaries and allowances and other terms and conditions of service of the President, Chairperson, and Members under section 29;

(e) the salaries and allowances and other terms and conditions of service of the Secretary and other staff for the Appellate Board and Commission under section 31;

(f) the reception and registration of class of persons as refugees, and all other matters connected to the management of such refugees;

(g) the procedure for voluntary repatriation of refugees;

(h) the enforcement of the rights and duties of refugees and asylum seekers;  
and

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both the Houses agree that the rule should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Empowerment  
of Concerned  
Authorities.

**50.** The Central Government may by order empower the concerned authorities to assist and cooperate with the Appellate Board and the Commission for the enforcement of this Act.

Bar or  
Jurisdiction.

**51.** On and from the appointed day, no court or authority shall have, or be entitled to exercise, any jurisdiction, powers or authority in relation to matters specified in this Act, except the Supreme Court and the High Court exercising powers under articles 32, 226 and 227 of the Constitution.

Protection of  
action taken  
in good faith.

**52.** No suit or other legal proceeding shall lie against the Central Government, State Government, Appellate Board, Commission or any person acting under the direction either of the Central Government, State Government, Appellate Board or Commission in respect of anything which is, in good faith, done or intended to be done, in pursuance of this Act or of any rules or any order made there under.

Act to have  
overriding  
effect.

**53.** The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

## STATEMENT OF OBJECTS AND REASONS

India is one of the most prominent refugee receiving countries in the world. According to Refugee International estimates, India hosts around 3,30,000 refugees and its refugee population includes Sri Lankans, Tibetans, Chinese and other minorities from Burma, Bhutan, Afghanistan, an unspecified but massive number of Hindus from Bangladesh, a number of Nepalese who fled the Maoist insurgency, and more than 400 from other countries. Despite this, India is neither a signatory to the 1951 UN Convention relating to the status of Refugees nor does it have a domestic asylum framework.

The Indian state has been very flexible in its treatment of some of the refugee communities. Yet it has no national refugee law specifying the rights and governing the treatment of refugees. As a result, different refugee communities have been subjected to varying standards of protection.

India has signed numerous human rights instruments that articulate a commitment to protection of refugees under the terms of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR).

The judiciary has also accorded constitutional protection to refugees in its judgment in *National Human Rights Commission vs State of Arunachal Pradesh & Anr.* in 1996. The Supreme Court held that the fundamental right to equality under article 14 and the right to life and personal liberty under article 21 extends to all foreigners, including refugees. Apart from protection under the Constitution, refugees also receive support from a body of complementary law and practice such as the Right to Education Act, 2009 (RTE) and health services. The Government of India relies on the Foreigners Act, 1946 and the Registration of Foreigners Act, 1939 to govern the entry, stay, and exit of all refugees.

However, these legislations treat refugees as foreigners and fail to take into account their special status on humanitarian grounds or under international law. They are not equipped to support the country's need to deal with asylum-seekers and migration movements. As a member of the Executive Committee of the United Nations High Commissioner for Refugee (UNHCR), India is committed to protect refugees and has also offered its assistance to refugees from Syria, Myanmar, and Afghanistan. Therefore, it has become increasingly important to enact a structured framework to establish a clear and consistent regime.

The status of refugees is presently determined by the extent of protection they receive from the Government of India which in turn has been influenced more by political equations than by humanitarian or legal obligations. It is important to mention that in 1997 India had drafted a model law on refugees under the guidance of Justice P.N. Bhagwati, the former Chief Justice of India, but it was not enacted. In addition it is a glaring anomaly that India is the only significant member of the UN without a refugee law, that too at a time when it is seeking recognition as a responsible international power through a permanent seat at the UN.

The proposed Bill seeks to incorporate the current policy on refugees, the principles of the Constitution, and India's international obligations. The provisions of the Bill provide clarity and uniformity on the recognition of asylum-seekers as refugees and their rights in the country. The Bill also provides for two different provisions to determine refugee status, individual and prima facie, latter of which gives discretion to the Central Government with respect to large movement of refugees.

India has been, and continues to be, a generous host to several persecuted communities, doing more than many countries who are signatories to the UN Refugee Convention, 1951.

This Bill will finally recognise India's long-standing and continuing commitment to humanitarian and democratic values while dealing with refugees.

Hence this Bill.

HUSAIN DALWAI

### FINANCIAL MEMORANDUM

Clause 16 provides for a legal representation where pleader is to be provided at the expense of the state to asylum-seeker who is unable to afford it. Clause 18 of the Bill provides for the establishment of the National Commission for Asylum. Clause 19 provides appointment of a Chairperson, not less than 10 Judicial members and not less than 10 expert members. Sub-clause 3 of Clause 19 provides Central Government shall specify the ordinary place or places of sitting of the Commission, and the territorial jurisdiction falling under each such place of sitting. Clause 22 provides for appointment of administrative, technical and other staff to the Commission. Clause 24 provides for the establishment of the National Appellate Board for Asylum which shall consist of a President and other members. Clause 27 provides for appointment of administrative, technical and other staff to the Appellate Board. Clause 29 provides that the salaries and allowances payable to the President, Chairperson, and Members shall be prescribed by the Central Government. Clause 31 provides for the appointment of a Secretary to the Commission and a Secretary to the Appellate Board to exercise the powers of general superintendence, direction and control in respect of all administrative matters of the Commission or Appellate Board. It also provides for salaries and allowances payable to the secretary and other officers and employees of the Commission and the Appellate Board shall be such as may be prescribed by the Central Government. Clause 41 provides that same healthcare rights which apply to Indian citizens and service and free and compulsory primary education shall be provided to the refugee who has been granted asylum. Clause 42 provides that same healthcare rights and services as applicable to Indian citizens and free and compulsory primary education shall be provided to asylum seekers and mass influx refugees. Clause 46 provides that the Central Government shall provides grants fo sums of money to the Commission and Appellate Board for carrying out the purposes of this Act. The Bill, therefore, if enacted would involve expenditure from the Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees fifty crore per annum would be involve from the Consolidated Fund of India. A non-recurring expenditure is also likely to involve.

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### MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 49 of the Bill empowers the Central Government to make rules for carrying out the provisions of the Bill. As the rules will relate to matter of detail only, the delegation of legislative power is of normal character.

## III

## BILL NO. LIII OF 2019

*A Bill further to amend the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973.*

BE it enacted by Parliament in the Seventieth year of the Republic of India as follows:—

## CHAPTER I

## PARLIAMENTARY

1. (1) This Act may be called the Criminal Laws (Amendment) Act, 2019.

Short title and  
commencement.

(2) It shall come into force with immediate effect.

## CHAPTER II

## AMENDMENTS TO THE INDIAN PENAL CODE, 1860

15 of 1860.

2. In the Indian Penal Code, (hereinafter referred to as the Penal Code), after section 153B, the following new section shall be inserted, namely:—

Insertion of  
new section  
153C.

"153C. Whoever on grounds of religion, race, caste or community, sex, gender identity, sexual orientation, place of birth, residence, language disability or tribe—

Prohibiting  
incitement to  
hatred.

(a) uses gravely threatening words either spoken or written, signs, visible representations within the hearing or sight of a person with the intention to cause or knowledge that it is likely to cause, fear or alarm; or

(b) advocates hatred by words either spoken or written, signs, visible representations, that causes or is likely to cause incitement to violence;

shall be punishable with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

Insertion of  
new section  
505A.

3. In the Penal Code, after section 505 the following new section shall be inserted, namely:—

Causing fear,  
alarm, or  
provocation  
of violence in  
certain cases.

"505 A. Whoever on grounds of religion, race, caste or community, sex, gender, sexual orientation, place of birth, residence, language, disability or tribe, intentionally or knowingly uses, in public, words, statements containing rumour or alarming news or displays any writing, sign, or other visible representation which is or is likely to be gravely threatening, or derogatory;

(i) within the hearing or sight of a person, causing fear or alarm; or

(ii) with the intent to provoke or knowledge that it is likely to provoke the use of violence,

against that person or another,

shall be punished with imprisonment for a term which may extend to three years or with fine, or with both".

### CHAPTER III

#### AMENDMENTS TO THE CODE OF CRIMINAL PROCEDURE, 1973

Amendment  
of First  
Schedule to  
the Code of  
Criminal  
Procedure,  
1973.

4. In the First Schedule to the Code of Criminal Procedure, 1973 under the heading "I.—OFFENCES UNDER THE INDIAN PENAL CODE", 2 of 1974.

(i) after the entries relating to section 153B, the following entry shall be inserted namely:—

1	2	3	4	5	6
153C	Prohibiting incitement to hatred	Imprisonment for three years, and/or fine, or both	Cognizable	Non bailable	Magistrate of the first class

(ii) after the entry relating to section 505, the following entry shall be inserted, namely:—

1	2	3	4	5	6
505A	Causing fear, alarm, or provocation of violence in certain cases	Imprisonment for three-year and/or with fine, or both	Cognizable	Non bailable	any Magistrate



## STATEMENT OF OBJECTS AND REASONS

Article 20(2) of the International Covenant on Civil and Political Rights (ICCPR), of which India is a signatory, requires states to prohibit hate speech. Advocacy of national, racial or religious hatred that constitutes incitement of discrimination or hostility is prohibited by law. Under the common law system, such speech had been treated, 'outside the realm of protected discourse'.

Hate speech has the potential of provoking individuals or society to commit acts of terrorism, genocides, ethnic cleansing etc. and has real and devastating effects on people's lives and risks their health and safety.

However, in the Indian Penal Code, 1860 there is no water tight compartment to deal with the various acts relating to hate speech, which generally overlap with each other. The provisions of hate speech fall under the categories of Offences Relating to Religion, Offences Against Public Tranquility and Criminal Intimidation, Insult and Annoyance. Section 124A penalises sedition, 153A penalises promoting enmity among groups on various grounds and doing acts prejudicial to maintenance of harmony, section 153B penalises imputation assertions prejudicial to national integration, and section 295A penalises malicious acts intended to outrage religious feelings which supplement section 298 which relates to uttering words with intent to wound the religious feelings. Section 505 deals with statements conducing to public mischief.

The Law Commission in its 267th report noting the above recommended that new provisions in IPC are required to be incorporated to address the issues elaborately and recommended insertion of new section 153C (Prohibiting incitement to hatred) and section 505A (Causing fear, alarm, or provocation of violence) in certain cases.

Therefore, it is proposed that the provision relating to hate speech be added so as to fill the lacuna in the existing criminal laws and provide for effective enforcement of human Rights.

Hence, this Bill.

HUSAIN DALWAI

## IV

## BILL NO. IV OF 2020

*A Bill further to amend the Protection of Children from Sexual Offences Act, 2012.*

BE it enacted by Parliament in the Seventy first Year of the Republic of India as follows:—

1. (1) This Act may be called the Protection of Children from Sexual Offences (Amendment) Act, 2020.

Short title,  
extent and  
commencement.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In the Protection of Children from Sexual Offences Act, 2012, after section 18 of the principal Act, the following section shall be inserted, namely:—

Insertion of  
new section  
18A.

"18A. Notwithstanding anything contained in any other law for the time being in force, where a child commits or attempts to commit any offence punishable under this Act or to cause such an offence to be committed and in such attempt, does any act towards the commission of the offence, he shall be charged as adult for such offence and shall be liable for punishment provided under this Act.

Punishment  
for offences  
by child  
between  
fifteen to  
eighteen  
years of age.

*Explanation.*—For the purposes of this section 'child' means any person between fifteen to eighteen years of age."

## STATEMENT OF OBJECTS AND REASONS

The Protection of Children from Sexual Offences Act, 2012 provides for severe punishment for sexual offences against children below eighteen years of age. The Act provides for death penalty for rape of a child below twelve years of age as well. But this law does not highlight how the offender would be treated if he himself is a minor. Today, the rate of physical and mental development of children has advanced much in comparison to earlier period which attributed to climate, eating habits and electronic gadgets such as mobile, television etc. It is, therefore, not appropriate to consider a child as adult only after he attains the age of eighteen years. Today, even a fifteen year child possesses qualities in thought and knowledge of an adult and knows what is good or bad. The incidents of heinous crimes like murder, rape and robbery committed by this age group are on the rise in the society. The girls who are comparatively innocent become easy prey to the offenders of the same age group.

Hence, it would be appropriate if child offenders between fifteen to eighteen years of age are also punished under the same sections under which the punishment for adults for offences such as raping minors or committing sexual offences against them have been provided for, so that our girls can stay safe at home and outside.

The Bill proposes that child offenders between fifteen to eighteen years of age should be covered under the ambit of the Protection of Children from Sexual Offences Act, 2012 and be given the same punishment as is given to adults.

Hence, this Bill.

SAROJ PANDEY

## V

## BILL NO. V OF 2020

*A Bill to provide for the welfare measures for the employees who have been terminated by the employers and for matters connected therewith or incidental thereto.*

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Terminated Employees (Welfare) Act, 2020.

Short title and  
application.

(2) Save as otherwise provided in this Act, it shall not apply to terminated employee who has been terminated for any of the following reasons:—

- (a) proven misconduct;
- (b) cheating;
- (c) indulging with fraudulent means and appropriate money; or
- (d) having been found guilty by a criminal court of justice.

Definitions.

2. In this Act, unless the context otherwise requires,—

(a) 'employer' means the owner or the director of any establishment or any organization which is not owned by the Central Government or a State Government or which is not the undertaking controlled by the Central Government or a State Government or funded by the Central Government or a State Government but includes the owner or director of a private establishment where not less than ten persons are employed;

(b) "fund" means the corpus fund established under section 5; and

(c) "terminated employee" means any employee who was employed by any employer, whether on regular or temporary capacity or casual in nature or on contract and whose services have been terminated by such employer.

Benefits to terminated employee.

3. (1) An employee whose employment is terminated for the reasons of the winding up of the organization or the establishment due to:—

(i) economic slowdown; or

(ii) change in technology in the respective field; or

(iii) the owner or director managing the affairs of the establishment becoming insolvent; or

(iv) the orders of any court; or

(v) incurring losses and unable to carry on the business; or

(vi) the change in Government policy;

shall be entitled to such unemployment compensation health insurance benefits or any other benefits as may be prescribed by the Central Government, if such benefits are not part of the employee-employer agreement, for nine months or till the time he gets employed elsewhere, whichever is earlier.

*Explanation I*—The period of nine months shall include the notice period to be served by the employer before termination.

*Explanation II*—The unemployment compensation shall be admissible if the employer does not provide any severance package to the terminated employee or the severance package is less than the compensation provided under this Act.

(2) The unemployment compensation shall not be less than sixty percent. of the gross salary of the terminated employee or as per the terms of the employee-employer agreement, whichever is higher and it shall be borne by the employer.

(3) The health insurance benefit shall continue till the period as specified in sub-section (1) with the same terms and conditions which prevailed during his employment.

(4) A terminated employee shall be entitled to the terminal benefits on the cessation of employment like provident fund, gratuity, leave encashment etc.

(5) The benefits notified under sub-section (1) shall be paid to the terminated employee from the month following the month on which termination is communicated to the employee or completion of the notice period, if any, whichever is earlier.

(6) If due to any reason, the employer is not able to pay the benefits within one month from the date of the termination of the employment, the employer shall pay to the terminated employee an interest at the rate of twelve per cent. per month for such delay.

(7) Nothing in this Act shall apply to any terminated employee if benefits admissible under the employee-employer agreement, are higher than the benefits prescribed under this Act.

**4.** (1) Every employer shall create a corpus fund to which at least five per cent of the net profit of the organization shall be credited, which shall be used for the welfare of terminated employees.

Corpus fund for welfare of terminated employees.

(2) Every employer shall be entitled to solicit contribution from any organization, individual or trust for the purpose of maintaining the fund, in such manner as may be, prescribed.

(3) Without prejudice to the generality of the provision contained in sub-section (1) the fund shall also be utilized for the following purposes, namely:—

(a) payment of expenditure in connection with the education of the children of the terminated employees; and

(b) medical facilities, free of cost, in such a manner as may be prescribed.

**5.** The Central Government shall, after due appropriation made by Parliament by law in this behalf, provide adequate funds for carrying out the purposes of this Act.

Central Government to provide funds.

**6.** (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, Parliament agrees in making any modification in the rule or Parliament agrees that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## STATEMENT OF OBJECTS AND REASONS

In an era, when the space for Public Sector has substantially shrunk and role of Private Sector has expanded, many questions relating to the welfare of employees attached to Private Sector and employer-employee relations have become significant. Pertinently, it gives rise to the question of emerging culture of relationship between employers and employees. It has been observed that employees face undiminished threat of losing jobs and live in a climate of uncertainty. Things become worse when they are relieved from jobs without any substantive compensation. Hundreds and thousands of people in their mid-age with family responsibilities and economic liabilities face unprecedented challenges to survive. It not only affect their lives but also the social and cultural process too. Moreover, laying off due to change in management policies or the Government policies or due to the losses incurred due to inefficient management are all the events where the employee doesn't have much control but is the one who suffers the most.

The Bill provides for minimum nine months time with assured income to the terminated employees and also medical benefits which will give them enough time to reassign themselves to new employment without disturbing the existing set up of their family. After employment a person often takes few loans to meet his need, gets their children admitted at a certain level of school. All this cannot come to a halt without any of his fault. The family of the employee should not suffer because of such events.

Neo liberalisation has increased the uncertainties in the lives of people. It also justifies inequality to an extent on the one hand and indoctrinates the employers to become insensitive to their employees. In fact, it has revived the rejected doctrine 'survival of the fittest'. This concern needs to be essentially addressed. Any welfare State cannot give primacy to profit making. Indian Constitution aspires, idealizes and also inspires to make endeavour to achieve equality. This cannot be treated as dead ideal. The State has to strive for it. No economic system can endure or can yield greater good of greater number and protect the interests of working people if it follows the blind path of development and allows the concentration of wealth. The goal of New India is to maximise egalitarianism and to minimise inequality. In this context protection of economic interests and dignity of employees of private sector is both moral and constitutional duty of the Indian state.

At present there is no law to ensure that the employers provide terminal benefits in time and which makes provision for education, medical facilities etc., to the families of employees who have been terminated. The Bill seeks to achieve the above objective.

Hence, this Bill.

RAKESH SINHA

## FINANCIAL MEMORANDUM

Clause 5 of the Bill provides that the Central Government shall provide funds for carrying out the provisions of the Bill. The Bill, therefore, if enacted, will involve expenditure from the Consolidated Fund of India. It is likely to involve a recurring expenditure of about rupees ten thousand crore per annum. A non-recurring expenditure of rupees five thousand crore is also likely to be involved.

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## MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.



## VI

## BILL NO. I OF 2020

*A Bill to provide for special financial assistance to the State of Rajasthan for the purpose of promoting the welfare of persons belonging to the Scheduled Castes, Scheduled Tribes and Other Backward Classes in the state and for the development, exploitation and proper utilization of its resources.*

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

1. (1) This Act may be called the the Special Financial Assistance to the State of Rajasthan Act, 2020.

Short title and  
commencement.

(2) It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

Special  
financial  
assistance to  
the State of  
Rajasthan.

**2. There shall be paid such sums of moneys out of the Consolidated Fund of India, every year, as Parliament may by due appropriation provide, as special financial assistance to the State of Rajasthan to meet the costs of such schemes of development, as may be undertaken by the State with the approval of the Government of India for the purpose of promoting the welfare of persons belonging to Scheduled Castes, Scheduled Tribes and Other Backward Classes in the state and for the development, proper utilization and exploitation of the resources in the State.**

Act not in  
derogation of  
other law.

**3.** The provisions of this Act shall be in addition to and not in derogation of any other law to be made by parliament or for the time being in force.

## STATEMENT OF OBJECTS AND REASONS

The State of Rajasthan is socially and economically backward. Problems of poverty, unemployment, illiteracy as well as measures for proper utilization of resources, welfare of weaker sections in the region are required to be addressed urgently by initiating new development schemes in a time-bound manner. Being a border state, Rajasthan is strategically located and it is in the nation's interest that its development needs are addressed. The State of Rajasthan is also facing problem arising out of natural calamities like floods and droughts. There is also a need to improve the standard of life of the people, sex-ratio and to incentivize the persons living below poverty line in the State of Rajasthan.

Hence this Bill.

DR. KIRODI LAL MEENA

## FINANCIAL MEMORANDUM

Clause 2 of the Bill provides that there shall be paid such sums of moneys out of the Consolidated Fund of India, every year, as Parliament may by due appropriation provide, as special financial assistance to the State of Rajasthan to meet the costs of such schemes of development, as may be undertaken by the State with the approval of the Government of India.

The Bill, therefore, on enactment, will involve expenditure out of the Consolidated Fund of India for providing special financial assistance to the State of Rajasthan. As the sums of moneys which will be given to the State of Rajasthan as special financial assistance by appropriation by law made by Parliament will be known only after the welfare schemes to be implemented by the State Government with the approval of Government of India are identified, it is not possible to give the estimates of recurring expenditure, which would be involved out of the Consolidated Fund of India at this stage.

No non-recurring expenditure is likely to be incurred from the Consolidated Fund of India.

## VII

## BILL No. III OF 2020

*A Bill further to amend the Constitution of India.*

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

1. This Act may be called the Constitution (Amendment) Act, 2020.

Short title.

2. After article 47 of the Constitution, the following article shall be inserted, namely:—

Insertion of  
new article  
47A.

“47A. The State shall promote small family norms by offering incentives in taxes, employment, education etc. to its people who keep their family limited to two children and shall withdraw every concession from and deprive such incentives to those not adhering to small family norm, to keep the growing population under control.”

Duty of the  
State to  
promote small  
family norm.

## STATEMENT OF OBJECTS AND REASONS

The fact that population of India has already crossed over 125 crore is really frightening. The country has doubled its population in just forty years and is expected to unseat China as the world's most populated country in the next couple of decades *i.e.* by the year 2050. As per UN Report, India, Nigeria and Pakistan are the countries which have the highest rate of growth of population. India's current yearly growth rate is 1.02 per cent. The country as a whole has a population density of 416 people per square kilometer, which ranks 31st in the World. Despite the fact that we have framed a National Population Control Policy, we are the second most populous country in the world.

Population explosion will cause many problems for our future generations. We have to be concerned about population explosion. The Centre as well as State Governments should launch schemes to tackle it. Our natural resources are extremely over burdened. The rate of growth of any country is directly related to size of its population. Natural resources like air, water, land, woods etc. are subjected to over exploitation because of over population. Today, there is a greater need to keep a strong check on the increase of our population.

Today, there is also a need to encourage the people to keep small family by offering tax concessions, priority in social benefit schemes and school admissions etc. and at the same time discourage them from producing more children by withdrawing tax concessions, imposing heavy taxes and by making other punitive provisions for violations.

Therefore, the Bill seeks to amend the Constitution with a view to make a provision by the State to discourage the people from increasing their family and encourage them to keep their family limited to two children only.

Hence this Bill.

ANIL DESAI

DESH DEEPAK VERMA,  
*Secretary-General.*